

**Declaration of Mark C. Mao**  
**Exhibit 2**

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SUPERIOR COURT OF CALIFORNIA  
SANTA CLARA COUNTY

**Ivan Zermينو, Adam Schultz,  
Christy Swint, et al.,**

Plaintiffs,

v.

**GOOGLE LLC,**

Defendant.

**Case No. 24CV436497**

**COMPLAINT**

1. INVASION OF PRIVACY  
ACT VIOLATIONS, CAL.  
PENAL CODE §§ 631 & 632
2. VIOLATIONS OF THE  
COMPREHENSIVE  
COMPUTER DATA  
ACCESS AND FRAUD ACT  
("CDAFA"), CAL. PENAL  
CODE §§ 502 ET SEQ.
3. INVASION OF PRIVACY;
4. INTRUSION UPON  
SECLUSION;
5. BREACH OF CONTRACT;
6. VIOLATION OF CA UCL,  
CAL BUS. & PROF CODE  
§§ 17200, ET. SEQ.
7. NEGLIGENCE PER SE
8. LARCENY / RECEIPT OF  
STOLEN PROPERTY, CAL.  
PENAL CODE §496(a), (c)
9. TRESPASS TO CHATTELS

DEMAND FOR JURY TRIAL

1 **COMPLAINT**

2 Plaintiffs, **Ivan Zermينو, Adam Schultz, Christy Swint, et al.**  
3 **(Attachment 1)** and each of them, individually (Hereinafter “Plaintiffs”) file  
4 this Complaint against defendant Google LLC (“Google” or “Defendant”),  
5 and in support allege the following.

6  
7 **SUMMARY:**

8 1. This lawsuit concerns Google’s surreptitious interception, collection,  
9 saving, and selling of each of Plaintiffs’ personal and sensitive user data while  
10 in “private browsing mode.” “Private browsing mode” on Google Chrome is  
11 called “Incognito mode”.

12 2. Upon information and belief, Plaintiffs allege Google intercepts, tracks,  
13 collects, saves, and sells data from everyone using any of its services and  
14 platforms, without user consent.

15 3. Through its consumer-facing products and services – and its business  
16 advertising and surveillance tools – Google amasses data about billions of  
17 people for the purpose of creating detailed user profiles in furtherance of  
18 targeted advertising, or for developing their own proprietary products to  
19 market.

20 4. Google accomplishes its surreptitious interception and data collection  
21 through unlawful and unfair means.

22 5. Google’s services are ubiquitous on the internet as the majority of  
23 websites use Google Analytics and Ad Manager. To use these services, Google  
24 requires website developers to embed Google’s code onto their websites and  
25 agree to its Privacy Policy. Google does not tell website developers that it  
26 tracks their visitors even when they are in “private browsing mode”.

27 6. Whenever account holders, like Plaintiffs, visit a website that is running  
28 Google Analytics, Ad Manager, or some similar Google service, Google’s

1 software is tracking them.

2 7. By design, Google's system is constantly tracking data. Once a user  
3 visits a website, the user's browser sends a "GET" request to the website to  
4 retrieve it. At the same time, the user's browser reads Google's code, which  
5 is embedded on the website. *Google's code instructs the user's browser to*  
6 *send a second and concurrent transmission directly to Google.* This second  
7 transmission tells Google *exactly* what a user's browser communicated to the  
8 website.

9 8. Google then takes users' personal information and associates it with  
10 preexisting account holder profiles.

11 9. The personal information that Google sells, shares, and uses includes  
12 the very sensitive private personal information Google *promises* it would not  
13 use for advertising purposes. The personal data identifies individual account  
14 holders, their devices, and their locations; the specific content of their Internet  
15 communications; including highly personal information Plaintiffs specifically  
16 seek to keep private.

17 10. Google's surreptitious tracking happened even when each of the  
18 Plaintiffs followed the steps that Google itself advised to safeguard their data.

19 11. Since 2016, Google has represented that users are "in control of what  
20 information [they] share with Google," leading users like Plaintiffs, and each  
21 of them, to reasonably believe that they had the power to limit what data  
22 Google tracks, collects, stores and shares with third parties.

23 12. Despite following Google's guidance for how to browse the web  
24 privately by using "Incognito mode" to prevent Google from saving their web  
25 and app activity data, **Google still intercepted, collected, and sold Plaintiffs'**  
26 **data.**

27 13. Google's surreptitious data harvesting enables Google to offer higher  
28 quality, more targeted, advertisements to users. This is at the core of Google's

1 business: hundreds of billions of dollars in revenue come from selling targeted  
2 advertisements to other companies.

3 14. By stealing and then selling users' private information, Google prevents  
4 those users from monetizing their own data while unjustly enriching itself.

5 15. Google further unjustly benefits from this unlawful data collection by  
6 using the data to develop its own proprietary products to sell.

7 16. Google's practices infringe upon users' privacy and intentionally  
8 deceive consumers at a time when the users are expressly seeking to safeguard  
9 their important and valuable private data.

10 17. State privacy laws recognize and protect individuals' reasonable  
11 expectations of privacy in confidential communications under these  
12 circumstances, and these laws prohibit Google's unauthorized interception  
13 and subsequent use of these communications.

14 18. Plaintiffs simply seek compensatory, statutory and punitive damages,  
15 and by its unlawful and outrageous conduct.

16  
17 **JURISDICTION AND VENUE**

18 19. This Court has subject matter jurisdiction over this action pursuant to  
19 Article VI, section 10 of the California Constitution and Code of Civil  
20 Procedure section 410.10.

21 20. This Court has personal jurisdiction over Defendant because it is  
22 headquartered in the State of California, county of Santa Clara, and  
23 purposefully avails itself of the laws, protections, and advantages of this State.

24 21. Venue is proper in this Court because Defendant conducts business in  
25 this County and reaped substantial profits from customers in this County. In  
26 addition, in its own Terms of Service, Defendant has agreed "...to submit to  
27 the exclusive jurisdiction of any state or federal court located in Santa Clara  
28 County, California (except for small claims court actions which may be

brought in the county where you reside), and waive any jurisdictional, venue, or inconvenient forum objections to such courts.” Finally, a substantial part of the acts and conduct charged herein occurred in this County.

## **FACTUAL ALLEGATIONS REGARDING GOOGLE**

### **A. Google’s “Privacy Policy”, “Privacy Controls”, and “Incognito Mode” Landing Page, Each Falsely State that Users Can Prevent Google’s Data Collection by Using “Private Browsing Mode”**

22. Google has repeatedly represented that users have control over what information is shared with Google and that users can prevent Google from tracking their browsing history and collecting their personal data online.

23. Google did not represent in any disclosure to Plaintiffs that it would continue to intercept, track, and collect communications even when they were in “private browsing mode.”

24. Google never notified Plaintiffs that Google would intercept users’ communications while in a private browsing mode, and that Google was doing so for purposes of creating user profiles or providing targeted advertisements. Google’s representations instead misled Plaintiffs into believing that their communications during private browsing were not intercepted and used to create user profiles or provide targeted advertising.

#### **i. Privacy Policy**

25. Plaintiffs allege dating back June 2016 until December 2023, Google’s Privacy Policy (the “Privacy Policy”), has made numerous representations about how users can “control” the information users share with Google and how users can browse the web anonymously and without their communications with websites being intercepted.

26. Google’s Privacy Policy starts by stating in the Introduction section that “you can adjust your privacy settings to control what we collect and how your

1 information is used” and that “[y]ou can choose to browse the web privately  
2 using Chrome in Incognito mode.”

3 27. Upon information and belief, Plaintiffs allege that as far back as June  
4 2016, Google’s Privacy Policy has said, “We will respect the choices you  
5 make to limit sharing or visibility settings in your Google Account.”

6 28. Upon information and belief, Plaintiffs allege that under “Your privacy  
7 controls” Google reiterates, “[y]ou have choices regarding the information we  
8 collect and how it’s used.”

9 29. Upon information and belief, Plaintiffs allege that on the “My Activity”  
10 section of the Privacy Policy, Google reiterates that “My Activity allows you  
11 to review and control data that’s created when you use Google services, like  
12 searches you’ve done.”

### 13 **ii. Privacy Controls**

14 30. Upon information and belief, Plaintiffs allege that users interested in  
15 controlling what Google collects are directed to the “Control Panel” of the  
16 Privacy Policy, where Google assures users that “[t]o browse the web  
17 privately, you can use private browsing” and that “[i]f you want to search the  
18 web without saving your search activity to your account, you can use private  
19 browsing mode in a browser (like Chrome or Safari).”<sup>1</sup>

20 31. Upon information and belief, Plaintiffs allege that when users click on  
21 “Go to My Activity” to control their data, they are presented with the option  
22 to “Learn more.” When users click on “Learn more,” they are taken to a page  
23 where they are supposed to be able to “View & control activity in your  
24 account.” On that page, Google states that you may “[s]top saving activity  
25 temporarily. . . . You can search and browse the web privately,” embedding a  
26 hyperlink to the “Search & Browse Privately” page.

27  
28  

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<sup>1</sup> <https://support.google.com/websearch/answer/4540094?>

### 1                   iii. How to Search & Browse Privately

2           32. On the “Search & Browse Privately” page, Google reiterates that the  
3 user, not Google, is “in control of what information [a user] . . . share[s] with  
4 Google . . . .” Google states simply that consumers enabling “private browsing  
5 mode” will allow consumers to “browse the web privately.”<sup>2</sup>

6           33. There is nothing on this page about Google Analytics, Google Ad  
7 Manager, any other Google data collection tool, or where and which websites  
8 online implement such data collection tools when users are privately  
9 browsing.

10          34. Upon information and belief, Plaintiffs allege that from the “View &  
11 control activity in your account” page referenced above, a consumer can also  
12 click the link, “Find & control your Web & App Activity” on the right-hand  
13 side. On that page, Google again says that searching and browsing in “private  
14 browsing mode” will “turn off” any “search customization” “using search-  
15 related activity.”

16          35. Upon information and belief, Plaintiffs allege that when users click the  
17 “Learn how” link, they are again redirected back to the “Search & Browse  
18 Privately” page. In other words, because Google repeatedly touts that users  
19 can “control” the information they share with Google and Google constantly  
20 refers users back to its recommendations on how users may “browse the web  
21 privately,” users are left with only one reasonable impression—if they are  
22 searching or browsing the web in “private browsing mode,” Google will honor  
23 their request to be left alone.

### 24                   iv. Incognito Mode: Google’s Own Private Browsing Mode

25          36. “Incognito mode” is Google’s name for the “private browsing mode”  
26 of Google’s own web browser software, Google Chrome.

27 \_\_\_\_\_  
28 <sup>2</sup> See SEARCH & BROWSE PRIVATELY,  
[https://support.google.com/websearch/answer/4540094?hl=en&ref\\_topic=3036132](https://support.google.com/websearch/answer/4540094?hl=en&ref_topic=3036132).



1 37. Upon information and belief, Plaintiffs allege the Incognito mode  
 2 landing page tells users “You’ve gone incognito” and “Now you can browse  
 3 privately” whenever a user enters Incognito mode.

4 38. Based on these Google representations, Plaintiffs and each of them,  
 5 reasonably expected that Google would not collect their data while in  
 6 Incognito mode. They reasonably understood “You’ve gone incognito” and  
 7 “Now you can browse privately” to mean they could browse privately, without  
 8 Google’s continued tracking and data collection.

9 39. Google could have disclosed on this Incognito mode landing page that  
 10 Google would track users and collect their data while they were browsing  
 11 privately, but Google did not do that. Instead, Google included representations  
 12 meant to assure users that they had “gone incognito” and could “browse  
 13 privately” with only limited exceptions, none of which included Google’s own  
 14 tracking and data collection practices while users were in “private browsing  
 15 mode”.

16 40. Google’s representations about how it does not track users under these  
 17 conditions are false, and contrary to the new privacy laws and its 2011  
 18 Consent Decree. Not only do consumers (including Plaintiffs) not know about  
 19 what Google is doing to collect data on them, they have no meaningful way  
 20 of avoiding Google’s data collection practices, even if they are following  
 21 Google’s instructions to “browse the web privately”.

22  
 23 **B. Google Surreptitiously Intercepts Communications Between Users**  
 24 **and Websites to Collect Personal User Data and Communications Even**  
 25 **When the Users are in “Private Browsing Mode”**

26 **i. The Data Surreptitiously Collected**

27 41. As described above, whenever a user (even a user in “private browsing  
 28 mode”, including Plaintiffs, and each of them) visits a website that is running

1 Google Analytics or Google Ad Manager, Google's software scripts on the  
2 website surreptitiously direct the user's browser to send a secret, separate  
3 message to Google's servers in California.

4 42. This secret separate message contains: The "GET request" sent from  
5 the user's computer to the website; the IP address of the user's connection to  
6 the internet; information identifying the browser software the user is using,  
7 including any "fingerprint" data (as described further below); any "User-ID"  
8 issued by the website to the user, if available; Geolocation of the user, if  
9 available; Information contained in "Google cookies," which were saved by  
10 the user's web browser on the user's device at any prior time.

11 43. Google does not notify users of this secret Google software code  
12 designed to collect user data even while they are browsing privately, which is  
13 hidden from users and runs without any notice to users of the interception and  
14 data collection. This interception and data collection exceeded all  
15 contemplated and authorized use of their data. Users also have no way to  
16 remove the surreptitious code or to opt-out of its functionality.

17 44. Plaintiffs believe and, on that basis, allege Google specifically designed  
18 the software to render ineffective any barriers users may wish to use to prevent  
19 access to their information, including by browsing in Incognito mode or other  
20 private browsing modes.

21 45. Private browsing modes are supposed to provide users with privacy, as  
22 represented by Google, but Google's software by design circumvents those  
23 barriers and enables Google to secretly collect user data and profile users.

24 46. Google collects precisely the type of private, personal information users  
25 wish and expect to protect when they have taken these steps to control what  
26 information is shared with Google. Google's tracking occurred and continues  
27 to occur no matter how sensitive or personal users' online activities are.  
28

**ii. How Google Collects Data Using Google Analytics**

47. The vast majority online website publishers on the internet utilize Google’s website visitor-tracking product, “Google Analytics,” in addition to other Google advertisement technology products (hereinafter the “Website”). Google Analytics provides data analytics and attribution about the origins of Website’s traffic, demographics, frequency, browsing habits on the Website, and other data about visitors. Google Analytics is a “freemium” service that Google makes available to websites.<sup>3</sup> Google Analytics is essential to Google for its targeted advertisement services and makes Google Search and its rankings possible by tracking the billions of visits to various Websites every day.

48. To implement Google Analytics, Google requires that Websites embed Google’s own custom code into their existing webpage code. When a user visits a website, their browser communicates a request to the Website’s servers to send the computer script to display the Website. The user’s browser then begins to read Google’s custom code along with the Website’s own code when loading the Website from the Website’s server.

49. Thus, two sets of code run as part of the browser’s attempt to load and read the Website pages—the Website’s own code, and Google’s embedded code.

50. Plaintiffs believe and, on that basis, allege Google’s embedded code causes the second and concurrent secret transmission from the user’s browser (on the user’s computer or other connected device), containing the duplicated message between the user and the Website, to be combined with additional data such as the user’s prior browsing history and other Google trackers and

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<sup>3</sup> Google Analytics is “free” to implement, but the associated data and attribution reports come at a price tag when Websites want more specific information. To obtain more specific and granular data about visitors, Websites must pay a substantial fee, such as by paying for Google’s DV360, Ad Hub, or Google Audience products.

1 identifiers, to be sent to Google's servers.

2 • **User-ID**

3 51. For larger websites and publishers that are able to pay Google's  
4 additional fees, Google offers an upgraded feature called "Google Analytics  
5 User-ID," which allows Google to map and match the user (including  
6 Plaintiffs) to a specific unique identifier that Google can track across the web.  
7 The User-ID feature allows Websites to "generate [their] own unique IDs,  
8 consistently assign IDs to users, and include these IDs wherever [the  
9 Websites] send data to Analytics." Because of Google's omnipresence on the  
10 web, the use of User-IDs can be so powerful that the IDs can identify related  
11 actions and devices and connect these seemingly independent data points.

12 52. This User-ID information is even more useful to Google than the  
13 individual websites. Across millions of websites, Google is able to use its  
14 secretly embedded computer scripts and User-IDs to compile what URLs the  
15 same users are viewing, even when they are in "private browsing mode",  
16 adding all of this information to Google's stockpile of user profiles.

17 • **Cookies**

18 53. Google also uses various cookies to supplement Google Analytics'  
19 tracking practices. Google Analytics contains a script that causes the user's  
20 browser to transmit, to Google, information from each of the Google Cookies  
21 already existing on the browser's cache. These Cookies typically show, at a  
22 minimum, the prior websites the user has viewed.

23 54. Google typically has its Cookies working with Google Analytics coded  
24 as "first party cookies," so that consumers' browsers are tricked into thinking  
25 that those Cookies are issued by the Website and not Google. This makes it  
26 difficult for consumers to block Google's Cookies, even if consumers tried to  
27 block or clear the cookies issued by "third parties."  
28

**ii. How Google Collects Data Using Ad Manager**

55. In addition to Google Analytics, the majority of website publishers utilize another Google tracking and advertising product, called “Google Ad Manager” which also collects the users’ URL viewing history.

56. Like Google Analytics, Google Ad Manager requires Google code to be embedded into the Website’s code. When the user’s browser sends a communication to the website, asking for content to be displayed (i.e., the URL), the embedded Google code causes the user’s browser to display targeted Google advertisements. These targeted ads are displayed along with the Website’s actual content. These advertisements are shown to the user on behalf of Google’s advertising customers, allowing Google to make money.

57. Google Ad Manager also uses Approved Pixels and Cookies to track users across the internet. Like Google Analytics, Google Ad Manager begins collecting information on a user before the content for the webpage has even fully loaded.

58. Plaintiffs believe and therefore allege, that in order to maximize Google’s revenue, Google Ad Manager is set up to automatically retarget a user based on information that Google has previously collected. Thereafter, Google continues to track and target the same user across the internet.

59. In many cases, the intercepted communications provide the “context” for targeted “contextual advertising” for Google, where Google combines the URL the consumer is viewing, with what Google knows about that user (e.g., Google Analytics User-ID, geolocation), to target the consumer in the “context” of his or her web experience. Because of Google’s pervasive presence on the internet, its unparalleled reach, and its uncanny ability to so target consumers, advertisers are willing to pay a premium for Google’s advertisement services.

60. As with Websites implementing Google Analytics, Websites using Ad

1 Manager do not consent to Google collecting data for Google’s own purposes  
 2 while users have enabled “private browsing mode”. On information and  
 3 belief, Google never receives consent from Websites implementing Ad  
 4 Manager that Google may continue to intercept user activity and user data for  
 5 its own purposes when users are in a private browsing mode. Indeed, Google  
 6 represents to consumers and Websites alike that it will adhere to its own  
 7 Privacy Policy.

8 **iii. Google Analytics and Google Ad Manager Intercepts**  
 9 **Communications and Collects Data from Users Even When in**  
 10 **“Private Browsing Mode”**

11 61. Plaintiffs believe and therefore allege that even when users are  
 12 browsing the internet in “private browsing mode”, Google continues to track  
 13 them, profile them and profit from their data whenever they visit a website  
 14 that uses Google Analytics or Google Ad Manager. Google collects precisely  
 15 the type of private, personal information users wish and expect to protect  
 16 when they have taken these steps to control what information is shared with  
 17 Google. Google’s tracking occurred and continues to occur no matter how  
 18 sensitive or personal users’ online activities are.

19 **iv. Google Collects “Fingerprinting” Data of Users in “Private**  
 20 **Browsing Mode”**

21 **1. X-Client-Data Header**

22 62. Another powerful tool Google uses in building detailed profiles of users  
 23 is the X-Client-Data Header.

24 63. Google’s Chrome browser identifies every device upon the first  
 25 installation of Chrome with a unique digital string of characters called  
 26 Google’s “X-Client-Data Header,” such that Google uniquely identifies the  
 27 device and user thereafter. Whenever Chrome is used, the Google browser is  
 28 constantly transmitting this X-Client-Data Header to Google servers.

64. *Through the X-Client-Data Header, Google can tell whether a user is in Incognito mode or not.* The X-Client Data Header is present in all Chrome-states except when the user is in Incognito mode. This feature effectively makes whether or not a user thinks they are browsing in private an additional data point that is sold.

65. The X-Client-Data Header allows Google to track Chrome users across the web, because it remains unchanged even if users “clear their browser cache” of cookies.<sup>4</sup>

## 2. GStatic

66. GStatic, which is a Google-hosted service for fonts, where Google loads the fonts displayed on the Website, instead of the Website’s web server. A significant portion of Websites also use this service. Google sells this service as something that allegedly helps to reduce bandwidth and improve loading time, because Google is hosting the fonts. Plaintiffs believe and, on that basis, allege that GStatic is an additional way that Google identifies and tracks consumers, including when consumers are in “private browsing mode”.

## 3. Google Approved Pixels

67. Google also authorizes Websites to place digital pixels (“Google Approved Pixels”) embedded within the Websites’ code.<sup>28</sup> These pixels are typically created and maintained by “approved third parties” (such as comScore, a data broker registered with California’s CCPA data broker registry).

68. When a user’s web browser accesses a website containing a Google Approved Pixels, that browser responds to the pixel by generating a unique display. Each user’s display is unique because it is generated in part, from certain digital signatures that are unique to each specific device (in

<sup>4</sup> See Thomas Claburn, *Is Chrome Really Secretly Stalking You Across Google Sites Using Per-Install ID Numbers? We Reveal the Truth*, THE REGISTER (Feb. 5, 2020), [https://www.theregister.co.uk/2020/02/05/google\\_chrome\\_id\\_numbers/](https://www.theregister.co.uk/2020/02/05/google_chrome_id_numbers/).



1 combination with the browser software running on the device). Plaintiffs  
2 believe and, on that basis, allege that by tracking these pixels and the unique  
3 resulting displays, Google and its data-broker partners are able to track and  
4 “measure” consumers across the web.

5 69. GStatic and Google Approved Pixels enable Google to identify  
6 consumers because the way the fonts and pixels are displayed on the browser  
7 help to uniquely identify whom the user is. This again is another set of data  
8 surreptitiously collected by Google via the consumer’s browser which is  
9 added to the duplicated communications between the user and Websites,  
10 which Google collects even when users are in “private browsing mode”.

11  
12 **C. The Information Intercepted, Collected, Shared, and Sold, by**  
13 **Google Is Personal Information as Defined by California Law**

14 70. California law defines “personal information” to include any  
15 “information that identifies, relates to, describes, is reasonably capable of  
16 being associated with, or could reasonably be linked, directly or indirectly,  
17 with a particular consumer or household.” CAL. CIV. CODE §  
18 1798.140(v)(1).

19 71. California law also includes a specific, non-exhaustive list of “personal  
20 information” that includes personal identifiers, online identifiers, IP  
21 addresses, email addresses, account names, characteristics of protected  
22 classifications, purchase history or consideration, Internet or other electronic  
23 network activity, including browsing history, geolocation data, employment-  
24 related information, education information, and “inferences drawn” from  
25 these sources “to create a profile about a consumer reflecting the consumer’s  
26 preferences, characteristics, psychological trends, predispositions, behavior,  
27 attitudes, intelligence, abilities, and aptitudes.” CAL. CIV. CODE §  
28 1798.140(v)(1).



72. The data that Google intercepts, collect, shares, and sells, is “personal information” under California law.

### **1. Google Creates User Profiles by Using Confidential Personal Information**

73. As stated above, the core of Google’s business model is targeted advertising. The bulk of Google’s revenue comes from what companies pay Google for targeted advertising, both on Google Search and on various websites and applications that use Google services. The more accurately Google can track and target consumers, the more advertisers are willing to pay Google’s high advertisement fees and services.

74. Google creates detailed “profiles” on each user and their devices, and then associates the data (collected from users in private browsing mode) with those users’ pre-existing Google “profiles.” Doing so improves the “profiles” and allows Google to sell more targeted ads to those users.

75. Google strives to build “profiles” on each individual (including Plaintiffs) and each of their devices. These “profiles” contain all the data Google can collect associated with each individual.

76. The “personal information” of Plaintiff, and each of them, that Google uses to identify and profile, includes, but is not limited to:

- **Google Analytics User-ID**

77. Google Analytics User-ID enables Google to associate the data collected from users in “private browsing mode” with specific and unique user profiles. Google does this by using a unique identifier of the user it collects from Websites, and Google Cookies that it collects across the internet on the same user. Google Analytics User-ID is “personal information” under California law because they are reasonably capable of being associated with and could reasonably be linked, directly or indirectly, with a particular consumer or household.

1           •       **Google Cookies and cookie related identifiers.**

2       78. A cookie is a small text file that a web-server can place on a person's  
3 web-browser and computing device when that person's web browser interacts  
4 with the website server. Cookie-related identifiers include "beacons, pixel  
5 tags, mobile ad identifiers ... and other forms of persistent or probabilistic  
6 identifiers that can be used to identify a particular consumer or device." CAL.  
7 CIV. CODE § 1798.140(x),(aj).

8       79. California law defines a "unique identifier" to expressly include "a  
9 persistent identifier that can be used to recognize a consumer, a family, or a  
10 device that is linked to a consumer or family, over time and across different  
11 services, including but not limited to ... cookies, beacons, pixel tags, mobile  
12 ad identifiers, ... or other forms of persistent or probabilistic identifiers that  
13 can be used to identify a particular consumer or device." Id. § 1798.140(aj).

14       80. Cookies and cookie-related identifiers are "personal information"  
15 under California law because they are reasonably capable of being associated  
16 with and could reasonably be linked, directly or indirectly, with a particular  
17 consumer or household.

18           •       **Device Identifier**

19       81. A device identifier is a number that identifies a device. Device  
20 identifiers are commonly used to identify and track Internet communications  
21 of specific users. California law specifically lists "device identifiers" as  
22 "unique personal identifiers." CAL. CIV. CODE § 1798.140(aj). Device  
23 identifiers are "personal information" under California law because they are  
24 reasonably capable of being associated with and could reasonably be linked,  
25 directly or indirectly, with a particular consumer or household.

26           •       **Geolocation**

27       82. California law specifically includes "geolocation data" in the definition  
28 of "personal information." See CAL. CIV. CODE § 1798.140(v)(1)(G).

1 Geolocation is commonly used to identify and track Internet communications  
2 of specific users. The dissemination of geolocation data connected to network  
3 activity poses drastic privacy consequences for users – regardless of whether  
4 the specific content of their Internet communications is sold or shared.

5 • **IP address information.**

6 83. An IP address is a number that identifies a computer connected to the  
7 Internet. IP addresses are used to identify and route communications on the  
8 Internet. Google tracks IP addresses associated with specific users. Google  
9 keeps a record of every IP address that it has ever associated with an account  
10 holder in each account holder's Google Account. IP address information is  
11 transmitted to Google's servers during the private and non-private browsing  
12 sessions. Google correlates and aggregates all of this information to create  
13 profiles on the consumers. IP addresses are "personal information" as a matter  
14 of law. CAL. CIV. CODE § 1798.140(v)(1)(A).

15 • **User-Agent Information**

16 84. A user-agent is an identifier that identifies the application, operating  
17 system, and version of the application and operating system for a specific user  
18 making a communication.

19 85. A user-agent alone may or may not be personal information. However,  
20 when used in combination with other identifiers, it is capable of directly or  
21 indirectly identifying a specific individual or household.

22 86. When multiple devices share a specific IP address on a single network,  
23 Google associates additional User-Agent information with each IP address  
24 that it associates with a Google account holder.

25 87. User-Agent information is "personal information" under California law  
26 when disclosed in connection with an IP address because it is information that  
27 is reasonably capable of being associated with or could reasonably be linked,  
28 directly or indirectly, with a particular consumer or household."

1                   • **Browsing History and Information Regarding a Consumer’s**  
 2                   **Interaction with an Internet Website, Application, or**  
 3                   **Advertisement**

4           88. California law expressly includes within the definition of “personal  
 5 information” “Internet or other electronic network activity information,  
 6 including but not limited to, browsing history, search history, and information  
 7 regarding a consumer’s interaction with an internet web site, application, or  
 8 advertisements.” CAL. CIV. CODE § 1798.140(v)(1)(F).

9           89. The information that Google disseminates about users is easily linked  
 10 to individual users to personally identify them. Furthermore, Google is well  
 11 aware that entities that regularly buy ad space maintain their own data sets  
 12 and are capable of automatically cross-referencing their own data so as to  
 13 identify the individual user.

14                   • **Google “fingerprinting”**

15           90. Google “fingerprinting” is a method of identifying information  
 16 regarding the consumer from various Google fingerprinting technologies that  
 17 uniquely identify the device. Because every device and application installed  
 18 has small differences, images, digital pixels, and fonts display differently for  
 19 every device and application, just ever so slightly. By forcing a consumer to  
 20 display one of its images, pixels, or fonts, online, Google are able to  
 21 “fingerprint” their users and consumers across the internet, with or without  
 22 their permission.

23           91. Fingerprint data is “personal information” because it identifies, relates  
 24 to, describes, and is reasonably capable of being associated with, or could  
 25 reasonably be linked directly to a particular consumer or household as  
 26 described in CAL. CIV. CODE § 1798.140(v)(1).

27  
 28   ///

**D. Google Rakes in Huge Profits from Its Surreptitious Collection of User Data**

92. Google’s continuous tracking of users is no accident.

93. Google’s enormous financial success results from its unparalleled tracking and collection of personal and sensitive user information and private communications (including Plaintiffs’) and selling and brokering of that user information to optimize advertisement services.

94. Plaintiffs believe and, on that basis, allege Google profits from the data it collects – including the user data collected while users are in a private browsing mode – in at least three ways.

95. *First*, Google associates confidential communications and data with a user profile or profiles, to enrich Google’s ability to charge its customers for advertisement-related services.

96. *Second*, Google then uses the intercepted confidential communications and user data (in combination with the user’s profile) to direct targeted advertisements to consumers (including Plaintiffs and each of them).

97. *Third*, Google uses the results to improve Google’s own algorithms and technology, such as Google Search and Bard AI.

98. The data Google collects contains consumers’ personal viewing information. Google intercepts, collects, reads, analyzes the contents of, and organizes this data based on consumers’ prior histories. Google creates “profiles” for each individual user and/or each individual device that accesses the Internet. Google seeks to associate as much information as possible with each profile because, by doing so, Google can profit from Google’s ad-targeting services.

99. Likewise, Google Ad Manager is a service that generates targeted advertisements to be displayed alongside third-party websites’ content. The user profiles, which Google creates and maintains using the collected user

1 data, are used by Google's algorithms to select which ads to display through  
2 Google.

3 100. Plaintiffs believe and, on that basis, allege Google is paid  
4 handsomely for these advertisements by the third-party advertisers.  
5 Google is able to demand high prices for these targeted-advertising services  
6 because Google uses user profiles (including data that Google obtained from  
7 users while in "private browsing mode") to select and display advertisements  
8 targeted at those specific profiles.

9 101. Plaintiffs are informed and believe that Google also benefits  
10 by using the data it collects to improve and refine existing Google products,  
11 services, and algorithms and also to develop new products, services and  
12 algorithms. This collection, usage, or monetization of user data renders moot  
13 the steps Plaintiffs have taken to try to control their information from being  
14 tracked or used by Google without their consent.

15 102. The trackers that Google has across the internet tell Google  
16 where consumers went subsequent to searching on Google Search, and they  
17 allow Google to track what websites are popular and how often they are  
18 visited. By compiling not just consumer profiles, but vast surveys of human  
19 behavior across the majority of web browser activity, Google is able to create  
20 a more effective search product as compared to its competitors.

21 103. Google reaps substantial profits from users, including  
22 Plaintiffs, by acquiring their sensitive and valuable personal information,  
23 which includes far more than mere demographic information and volunteered  
24 personal information like name, birth date, gender and email address.

25 104. The information Google tracks have massive economic value.  
26 This value is well understood in the e-commerce industry, and personal  
27 information is now viewed as a form of currency. Likewise, the cash value of  
28 the personal user information unlawfully collected by Google can be

1 quantified.

2 105. Google itself was willing to compensate users for the exact type  
3 of communications that Google illegally intercepted from Plaintiff.<sup>5</sup>

4 106. A number of platforms on the market enable consumers to  
5 monetize their own data and prevent tech companies from targeting them  
6 absent their express consent.

7 107. The California Consumer Protection Act (CCPA) recognizes that  
8 consumers' personal data is a property right. Not only does the CCPA prohibit  
9 covered businesses from discriminating against consumers that opt-out of data  
10 collection, the CCPA also expressly provides that: "[a] business may offer  
11 financial incentives, including payments to consumers as compensation, for  
12 the collection of personal information, the sale of personal information, or the  
13 deletion of personal information." Cal. Civ. Code §1798.125(b)(1). The CCPA  
14 provides that, "[a] business shall not use financial incentive practices that are  
15 unjust, unreasonable, coercive, or usurious in nature." Cal. Civ. Code §  
16 1798.125(b)(4).

17 108. Through its false representations and unlawful data collection,  
18 Google is unjustly enriching itself at the cost of consumer choice, when the  
19 consumer would otherwise have the ability to choose how they would  
20 monetize their own data.

21 109. Google's unlawful practices have been extensively litigated in a  
22 class action lawsuit filed in federal court in June 2020, where the federal court  
23 denied Google's motions to dismiss and for summary judgment and also  
24 granted Rule 23(b)(2) certification for two nationwide classes seeking  
25 injunctive relief. *Brown v. Google LLC*, No. 4:20-cv-03664-YGR-SVK, Dkts.  
26 53, 82, 87, 89, 92, 113. Google intentionally and falsely led users to believe  
27

28 <sup>5</sup> Jack Marshall, *Google Pays Users for Browsing Data*, DigiDay (Feb. 10, 2012),  
<https://digiday.com/media/google-pays-users-for-browsing-data/>

1 that they could limit Google's data collection practices by setting their  
2 Chrome browser to Incognito mode. The claims for damages here are all based  
3 on facts alleged in the Brown Lawsuit.

4 110. The Brown lawsuit led to discovery of admissions by Google  
5 employees in their own documents that Google was intentionally deceiving  
6 users.

### 7 8 **E. Tolling the Statute of Limitations**

9 111. Any applicable statutes of limitations have been tolled under (1)  
10 the fraudulent concealment doctrine, based on Google's knowing and active  
11 concealment and denial of the facts alleged herein and (2) the delayed  
12 discovery doctrine, as Plaintiffs did not and could not reasonably have  
13 discovered Google's conduct alleged herein until shortly before the Complaint  
14 was filed.

15 112. Google repeatedly and falsely represented that its users  
16 (including Plaintiffs and each of them) could prevent Google from tracking  
17 users and collecting their information, such as by using a browser in "private  
18 browsing mode."

19 113. Google never disclosed that it would continue to track users and  
20 collect their data once these steps were performed, nor did Google ever admit  
21 that it would still attempt to intercept, collect, aggregate, and analyze user data  
22 so that it can continue to track individual users even when the user has  
23 followed Google's instructions on how to browse privately.

24 114. Google also further misled users by indicating that data  
25 associated with them would be viewable through their account, but Google  
26 did not include the user data at issue in this lawsuit (data collected while in  
27 Incognito mode) in user accounts. Google's failure to do so is part of Google's  
28 active deception and concealment.



1        115. Google’s representations are false. Google did not provide users  
2 with control and permit them to browse privately, and Google instead  
3 continued to intercept users’ communications and collect user data while users  
4 were in a private browsing mode. These Google representations, at a  
5 minimum, omitted material facts that would be necessary to make the  
6 statements made not misleading, as they left the false impression that Google  
7 did not intercept and collect users’ data while they were in “private browsing  
8 mode”.

9        116. Moreover, Google’s labeling of the relevant products “Incognito  
10 mode” and “private browsing” is, in and of itself, misleading absent clear  
11 disclosures about the ways in which Google intercepts and uses users’ private  
12 data. Indeed, “incognito” is defined as “with one’s identity concealed.” Private  
13 is defined as “not known or intended to be known publicly: secret.” However,  
14 as alleged above, Google in fact intercepts users’ private data and then  
15 associates that data with the user’s profile across its services—hardly  
16 “private” or “Incognito” at all.

17        117. Plaintiffs reasonably relied upon Google’s false and misleading  
18 representations and omissions that they controlled use of their data through  
19 private browsing modes such as Incognito mode and, based on those  
20 misrepresentations, reasonably believed that Google was not intercepting and  
21 using their private data when they were in such private browsing modes.

22        118. Plaintiffs did not discover and could not reasonably have  
23 discovered, that Google was instead intercepting and using their data in the  
24 ways set forth in this Complaint until shortly before the lawsuit was filed in  
25 consultation with counsel.

26        119. Plaintiffs exercised reasonable diligence to protect their data  
27 from interception. Indeed, that is precisely the reason *why* they used Google’s  
28 “Incognito mode” and other private browsing modes. Yet they did not and

1 could not have reasonably discovered their claims through the exercise of  
2 reasonable diligence until consulting with counsel shortly before the filing of  
3 this Complaint.

4  
5 **PARTIES:**

6 **PLAINTIFFS:**

7 120. Plaintiffs are individuals who are all within the scope of the  
8 certified nationwide classes in the *Brown* Lawsuit who have now decided to  
9 separately seek monetary relief from Google based on Google's unlawful acts.  
10 Plaintiffs assert claims that already survived past motions to dismiss and  
11 summary judgment in the *Brown* Lawsuit, where the federal court certified  
12 two nationwide classes under Rule 23(b)(2) to pursue these claims for  
13 purposes of obtaining injunctive relief. Plaintiffs now each seek monetary  
14 relief from Google, including statutory damages. Google has taken the  
15 position that any request for monetary relief involves certain individualized  
16 issues and should be tried separately.

17 121. Plaintiffs, and each of them, are adult Google account holders  
18 who used Google's "Incognito mode" to browse the web privately to visit non-  
19 Google websites without signing in to any Google account. Although  
20 Plaintiffs did not know at the time, Plaintiffs are informed and believe Google  
21 was, at all relevant times, surreptitiously tracking their private web browsing  
22 activity.

23 122. Plaintiffs, and each of them, accessed the internet to send and  
24 receive communications with websites on devices that were not shared, using  
25 Incognito mode in Chrome to visit websites privately and at no time did  
26 Plaintiffs give Google consent to track their internet use.

27 123. Despite the lack of consent, Google surreptitiously tracked  
28 Plaintiffs' internet uses and intercepted Plaintiffs' communications with

1 websites, revealing the information Incognito mode promised to keep private.

2 124. Google then sells the surreptitiously gained private personal  
3 information of Plaintiffs, causing irreparable damage to Plaintiffs' privacy  
4 rights and ability to control their own personal rights and data.

5 125. Plaintiffs, and each of them, are residents of California and  
6 hereby bring California state law claims arising from Google's intentional and  
7 unauthorized interception and tracking of their internet communications and  
8 activity while in Incognito mode, and intentional and unauthorized invasion  
9 of consumer privacy.

10  
11 **DEFENDANT:**

12 126. Defendant Google is a Delaware limited liability company with  
13 a principal place of business at The Googleplex, 1600 Amphitheatre Parkway,  
14 Mountain View, California 94043. Google regularly conducts business  
15 throughout California and in this judicial district. Google is one of the largest  
16 technology companies in the world and conducts product development,  
17 search, and advertising operations in this district.

18 **CALIFORNIA LAW APPLIES TO ALL PLAINTIFFS' CLAIMS**

19 127. California's substantive laws apply to every Plaintiff, regardless  
20 of where in the United States they reside. Google's Terms of Service  
21 explicitly states "California law will govern all disputes arising out of or  
22 relating to these terms, service specific additional terms, or any related  
23 services, regardless of conflict of laws rules." As a result, Google concedes  
24 that it is appropriate for this Court to apply California law to this dispute as to  
25 all Plaintiffs.

26 128. California's substantive laws may be applied to Plaintiff's claims  
27 under the *Due Process* and *Full Faith and Credit* Clauses of the United States  
28 Constitution, as California has significant contacts to the claims Plaintiffs

1 assert. These contacts create state interests that ensure that the choice of  
 2 California state law is not arbitrary or unfair. Further, California has the  
 3 greatest interest in applying its laws here.

#### 4 5 COUNTS

#### 6 **COUNT ONE: VIOLATION OF THE CALIFORNIA INVASION OF** 7 **PRIVACY ACT (“CIPA”) CALIFORNIA PENAL CODE §§ 631 & 632**

8 129. Plaintiffs hereby incorporate all foregoing paragraphs as if fully  
 9 stated herein.

10 130. The California Invasion of Privacy Act (“CIPA”) is codified at  
 11 Cal. Penal Code §§630 to 638. The Act begins with its statement of purpose:

12  
 13 The Legislature hereby declares that advances in  
 14 science and technology have led to the development  
 15 of new devices and techniques for the purpose of  
 16 eavesdropping upon private communications and  
 17 that the invasion of privacy resulting from the  
 18 continual and increasing use of such devices and  
 19 techniques has created a serious threat to the free  
 20 exercise of personal liberties and cannot be  
 21 tolerated in a free and civilized society.

22 Cal. Penal Code § 630.

23 131. California Penal Code § 631(a) provides, in pertinent part:

24 Any person who, by means of any machine,  
 25 instrument, or contrivance, or in any other  
 26 manner . . . willfully and *without the consent* of all  
 27 parties to the communication, or in any  
 28 unauthorized manner, reads, or attempts to read, or  
 to learn the contents or meaning of any message,  
 report, or communication while the same is in  
 transit or passing over any wire, line, or cable, or is  
 being sent from, or received at any place within this  
 state; or who uses, or attempts to use, in any manner,  
 or for any purpose, or to communicate in any way,  
 any information so obtained, or who aids, agrees

1 with, employs, or conspires with any person or  
 2 persons to lawfully do, or permit, or cause to be  
 3 done any of the acts or things mentioned above in  
 4 this section, is punishable by a fine not exceeding  
 5 two thousand five hundred dollars . . .

6  
 7 132. California Penal Code § 632(a) provides, in pertinent part:

8 A person who, intentionally and without the consent  
 9 of all parties to a confidential communication, uses  
 10 an electronic amplifying or recording device to  
 11 eavesdrop upon or record the confidential  
 12 communication, whether the communication is  
 13 carried on among the parties in the presence of one  
 14 another or by means of a telegraph, telephone, or  
 15 other device, except a radio, shall be punished by a  
 16 fine not exceeding two thousand five hundred  
 17 dollars...

18 133. Under the above-referenced sections of the CIPA, a defendant  
 19 must show it had the consent of *all* parties to a communication.

20 134. Google has its principal place of business in California; designed  
 21 and effectuated its scheme to illegally track its users while they were in  
 22 “private browsing session”; and has adopted California substantive law to  
 23 govern its relationship with its users.

24 135. At all relevant times, Google’s tracking and interceptions of  
 25 Plaintiffs’ internet communications while using Incognito mode was without  
 26 authorization and consent from Plaintiffs or Websites. The interceptions by  
 27 Google were offensive, unlawful, and outrageous.

28 136. Google’s surreptitious tracking of Plaintiffs’ internet  
 communications while in Incognito mode was intentionally designed to gain  
 information about the content in the URLs Plaintiffs visited.

137. The following items constitute “machine[s], instrument[s], or  
 contrivance[s]” under the CIPA, and even if they do not, Google’s deliberate  
 and admittedly purposeful scheme that facilitated its interceptions falls under

1 the broad statutory catch-all category of “any other manner”:

- 2 A. The computer codes and programs Google used to track Plaintiffs’
- 3 communications while they were in Incognito mode;
- 4 B. Plaintiffs’ browsers and mobile applications;
- 5 C. Plaintiffs’ computing and mobile devices;
- 6 D. Google’s web and ad servers;
- 7 E. The web and ad-servers of websites from which Google tracked and
- 8 intercepted Plaintiffs’ communications while they were using a web
- 9 browser in Incognito mode;
- 10 F. The computer codes and programs used by Google to effectuate its
- 11 illegal tracking and interception of Plaintiffs’ communications while
- 12 browsing in Incognito mode; and
- 13 G. The unlawful plan Google carried out to effectuate its tracking and
- 14 interception of Plaintiffs’ communications while using Incognito
- 15 mode.

16 138. The data collected by Google constituted “confidential  
17 communications,” as that term is used in Section 632, because Plaintiffs had  
18 objectively reasonable expectations of privacy while browsing in “private  
19 browser mode.”

20 139. Plaintiffs have suffered actual losses by reason of these  
21 violations, including, but not limited to, violation of their rights to privacy and  
22 loss of value in their personally identifiable information.

23 140. Plaintiffs have been injured by the violations of California Penal  
24 Code §§ 631 and 632 and pursuant to California Penal Code §637.2, each seek  
25 damages for the greater of \$5,000 per violation or three times the amount of  
26 actual damages.

**COUNT TWO: VIOLATIONS OF THE COMPREHENSIVE  
COMPUTER DATA ACCESS AND FRAUD ACT (“CDAFA”), CAL.  
PENAL CODE § 502 ET SEQ.**

141. Plaintiffs hereby incorporate all foregoing paragraphs as if fully stated herein.

142. Cal. Penal Code § 502 provides: “For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.” Smart phone devices with the capability of using web browsers are “computers” within the meaning of the statute.

143. Google violated Cal. Penal Code § 502(c)(2) by knowingly accessing and without permission taking, copying, analyzing, and using Plaintiffs’ “computer” browsing data.

144. Google was unjustly enriched when it surreptitiously acquired Plaintiffs’ sensitive and valuable personal information without permission and used it for Google’s own financial benefit. Plaintiffs retain a stake in the profits Google earned from their personal browsing histories and other data because, under the circumstances, it is unjust for Google to retain those profits.

145. Google accessed, copied, took, analyzed, and used data from Plaintiffs’ computers in and from the State of California, where Google: (1) has its principal place of business; and (2) used servers that provided communication links between Plaintiffs’ devices and Google, which allowed Google to access and obtain Plaintiffs’ data. Accordingly, Google caused the access of Plaintiffs’ computers from California, and is therefore deemed to have accessed Plaintiffs’ computers in California.

146. As a direct and proximate result of Google's unlawful conduct within the meaning of Cal. Penal Code § 502, Google has caused actual losses to Plaintiffs and has been unjustly enriched in an amount to be proven at trial.

147. Plaintiffs seek compensatory damages and/or disgorgement of profits in an amount to be proven at trial.

148. Plaintiffs are entitled to exemplary damages pursuant to Cal. Penal Code § 502(e)(4) because Google’s violations were willful and, upon information and belief, Google is guilty of oppression, fraud, or malice as defined in Cal. Civil Code § 3294.

149. Plaintiffs are also entitled to recover their reasonable attorneys' fees pursuant to Cal. Penal Code § 502(e).

### **COUNT THREE: INVASION OF PRIVACY**

150. Plaintiffs hereby incorporate all foregoing paragraphs as if fully stated herein.

151. Google collected the data with the intent to intrude upon users' seclusion and invade their constitutional privacy. The California Constitution and common law protect consumers from invasions of their privacy and intrusion upon seclusion.

152. The right to privacy in California's constitution creates a right of action against private entities such as Google.

153. Plaintiffs’ expectation of privacy is deeply enshrined in California’s Constitution. Article I, section 1 of the California Constitution provides: “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property and pursuing and obtaining safety, happiness, and privacy.”

154. The phrase “and privacy” was added by the “Privacy Initiative”



1 adopted by California voters in 1972. After voters approved a proposed  
 2 legislative constitutional amendment designated as Proposition 11. Critically,  
 3 the argument in favor of Proposition 11 reveals that the legislative intent was  
 4 to curb businesses' control over the unauthorized collection and use of  
 5 consumers' personal information, stating:

6           The right of privacy is the right to be left alone...It  
 7 prevents government and business interests from  
 8 collecting and stockpiling unnecessary information  
 9 about us and from misusing information gathered  
 10 for one purpose in order to serve other purposes or  
 11 to embarrass us. Fundamental to our privacy is the  
 12 ability to control circulation of personal  
 13 information. This is essential to social  
 14 relationships and personal freedom. BALLOT  
 15 PAMP., PROPOSED STATS. & AMENDS. TO  
 16 CAL. CONST. WITH ARGUMENTS TO  
 17 VOTERS, GEN. ELECTION \*26 (Nov. 7, 1972).

18           155.       The principal purpose of this constitutional right was to protect  
 19 against unnecessary information gathering, use, and dissemination by public  
 20 and private entities, including Google.

21           156.       To plead a California constitutional privacy claim, a plaintiff  
 22 must show an invasion of (1) a legally protected privacy interest; (2) where  
 23 the plaintiff had a reasonable expectation of privacy in the circumstances; and  
 24 (3) conduct by the defendant constituting a serious invasion of privacy.

25           157.       As described herein, Google has intruded upon the following  
 26 legally protected privacy interests:

- 27           i. The California Invasion of Privacy Act as alleged herein;
- 28           ii. The California Comprehensive Data Access and Fraud Act as  
 alleged herein;
- iii. A Fourth Amendment right to privacy contained on personal  
 computing devices, including web-browsing history, as explained  
 by the United States Supreme Court in the unanimous decision of

1 *Riley v. California*;

2 iv. The California Constitution, which guarantees Californians the  
3 right to privacy;

4 v. Google's Privacy Policy and policies referenced therein and other  
5 public promises it made not to track or intercept Plaintiffs'  
6 communications or access their computing devices and web-  
7 browsers while in a private browsing session.

8 158. Plaintiffs had a reasonable expectation of privacy under the  
9 circumstances in that Plaintiffs could not reasonably expect Google would  
10 commit unlawful and offensive acts in violation of federal and state civil and  
11 criminal laws; and Google affirmatively promised users it would not track  
12 their communications or access their computing devices or web-browsers  
13 while they were using a web browser while in "private browsing mode."

14 159. Google's actions constituted a serious invasion of privacy in that  
15 it:

- 16 i. Invaded a zone of privacy protected by the Fourth Amendment,  
17 namely the right to privacy in data contained on personal  
18 computing devices, including web search and browsing histories;
- 19 ii. Violated dozens of state criminal laws on wiretapping and invasion  
20 of privacy, including the California Invasion of Privacy Act;
- 21 iii. Invaded the privacy rights of hundreds of millions of consumers  
22 (including Plaintiffs) without their consent;
- 23 iv. Constituted the unauthorized taking of valuable information from  
24 hundreds of millions of consumers (including Plaintiffs) through  
25 deceit; and
- 26 v. Further violated Plaintiffs' reasonable expectation of privacy via  
27 Google's review, analysis, and subsequent uses of Plaintiffs'  
28 private and other browsing activity that Plaintiffs considered

1 sensitive and confidential.

2 160. The surreptitious and unauthorized tracking of the internet  
3 communications of Plaintiffs, particularly where, as here, they have taken  
4 active (and recommended) measures to ensure their privacy, constitutes an  
5 egregious breach of social norms that is highly offensive.

6 161. Google's invasion of privacy into Plaintiffs' internet  
7 communications and their computing devices, web-browsers, and  
8 applications, was highly offensive to a reasonable person in that they violated  
9 federal and state criminal and civil laws designed to protect individual privacy  
10 and against theft.

11 162. Secret monitoring of private web browsing is highly offensive  
12 behavior.

13 163. Following Google's unauthorized interception of the sensitive  
14 and valuable personal information, the subsequent analysis and use of that  
15 private browsing activity to develop and refine profiles on Plaintiffs violated  
16 their reasonable expectations of privacy.

17 164. Wiretapping and surreptitious recording of communications is  
18 highly offensive behavior.

19 165. Google lacked a legitimate business interest in tracking users  
20 while browsing the internet in Incognito mode without their consent.

21 166. Plaintiffs have been damaged by Google's invasion of their  
22 privacy and they are entitled to just compensation and injunctive relief.

23  
24 **COUNT FOUR: INTRUSION UPON SECLUSION**

25 167. Plaintiffs hereby incorporate all foregoing paragraphs as if fully  
26 stated herein.

27 168. Plaintiffs asserting claims for intrusion upon seclusion must  
28 plead (1) intrusion into a private place, conversation, or matter; (2) in a

1 manner highly offensive to a reasonable person.

2 169. In carrying out its scheme to track and intercept Plaintiff's  
3 communications while they were in Incognito mode in violation of its own  
4 privacy promises, Google intentionally intruded upon Plaintiffs' solitude or  
5 seclusion in that it effectively placed itself in the middle of conversations to  
6 which it was not an authorized party.

7 170. Google's tracking and interception were not authorized by  
8 Plaintiffs, the Websites with which they were communicating or Plaintiffs'  
9 web-browsers.

10 171. Google's intentional intrusion into their internet communications  
11 and their computing devices and web-browsers was highly offensive to a  
12 reasonable person in that they violated federal and state criminal and civil  
13 laws designed to protect individual privacy and against theft.

14 172. The taking of personally identifiable information from Plaintiffs  
15 through deceit is highly offensive behavior, particularly where, as here,  
16 Plaintiffs took active (and recommended) measures to ensure their privacy.

17 173. Secret monitoring of private web browsing is highly offensive  
18 behavior.

19 174. Wiretapping and surreptitious recording of communications is  
20 highly offensive behavior.

21 175. Plaintiffs have been damaged by Google's invasion of their  
22 privacy and are entitled to reasonable compensation including but not limited  
23 to disgorgement of profits related to the unlawful internet tracking.

24  
25 **COUNT FIVE: BREACH OF CONTRACT**

26 176. Plaintiffs hereby incorporate all foregoing paragraphs as if fully  
27 stated herein.

28 177. Google's relationship with its users is governed by the Google

Terms of Service, the Google Chrome and Chrome OS Additional Terms of Service, and the Chrome Privacy Notice, which incorporate and/or should be construed consistent with the Privacy Policy, the “Search & Browse Privately” page, and the Incognito Screen.

178. On information and belief, the Chrome Privacy Policy has historically promised Plaintiffs that Google does not collect or use private browsing communications, including by explaining that “[y]ou can limit the information Chrome stores on your system by using Incognito mode” and that, within Incognito mode, “Chrome won’t store certain information, such as: Basic browsing history information like URLs, cached paged text, or IP addresses of pages linked from the websites you visit [and] Snapshots of pages that you visit.”

179. The Privacy Policy, the Incognito landing screen, and the “Search & Browse Privately” page similarly promise that users can control Google’s collection and use of their browsing data, including by enabling a private browsing mode such as Incognito mode, and that Google would not collect and use private browsing data.

180. Google breached these promises.

181. Plaintiffs fulfilled their obligations under the relevant contracts.

182. As a result of Google’s breach(es), Google was able to unlawfully obtain the personal property of Plaintiffs and earn unjust profits.

183. Plaintiffs seek compensatory damages, consequential damages, and/or non-restitutionary disgorgement in an amount to be proven at trial.

**COUNT SIX: CALIFORNIA UNFAIR COMPETITION LAW**  
**(“UCL”), CAL. BUS. & PROF CODE § 17200 ET SEQ.**

184. Plaintiffs hereby incorporate all foregoing paragraphs as if fully stated herein.

1       185.       The UCL prohibits any “unlawful, unfair, or fraudulent business  
2 act or practice and unfair, deceptive, untrue or misleading advertising.” Cal.  
3 Bus. & Prof. Code § 17200 (UCL). By engaging in the practices  
4 aforementioned, Google has violated the UCL.

5       186.       Google’s “unlawful” acts and practices include its violation of  
6 the Federal Wiretap Act, 18 U.S.C. § 2510, et seq.; the California Invasion of  
7 Privacy Act, Cal. Penal Code §§ 631 and 632; the California Computer Data  
8 Access and Fraud Act, Cal. Penal Code § 502, et seq.; and Invasion of Privacy.

9       187.       Google’s conduct violated the spirit and letter of these laws,  
10 which protect property, economic and privacy interests and prohibit  
11 unauthorized disclosure and collection of private communications and  
12 personal information.

13       188.       Google’s “unfair” acts and practices include its violation of  
14 property, economic and privacy interests protected by the statutes identified  
15 in paragraph 168.

16       189.       To establish liability under the unfair prong, Plaintiffs need not  
17 establish that these statutes were actually violated, although the claims  
18 pleaded herein do so.

19       190.       Plaintiffs have suffered injuries-in-fact, including the loss of  
20 money and/or property as a result of Google’s unfair and/or unlawful  
21 practices. Plaintiffs have suffered unauthorized disclosure and taking of their  
22 personal information which has value, as demonstrated by its use and sale by  
23 Google. Plaintiffs have suffered harm in the form of diminution of the value  
24 of their private and personally identifiable data and content.

25       191.       Google’s actions caused damage to, and loss of, Plaintiffs’  
26 property right to control the dissemination and use of their personal  
27 information and communications.

28       192.       Google reaped unjust profits and revenues in violation of the

UCL. This includes Google’s profits and revenues from their targeted-advertising and improvements of Google’s other products. Plaintiffs seek restitution and disgorgement of these unjust profits and revenues.

#### **COUNT SEVEN: NEGLIGENCE PER SE**

193. Plaintiffs hereby incorporate all foregoing paragraphs as if fully stated herein.

194. In California, negligence per se is a legal principle in which you are presumed to have acted negligently if you violate a statute and, in so doing, injure someone that the statute was designed to protect. Negligence per se. Evidence Code § 669.

195. “Although compliance with the law does not prove the absence of negligence, violation of the law does raise a presumption that the violator was negligent. This is called negligence per se.” (*Jacobs Farm/Del Cabo, Inc. v. Western Farm Service, Inc.* (2010) 190 Cal.App.4th 1502, 1526 [119Cal.Rptr.3d 529]; *see also* Cal. Law Revision Com. com. to Evid. Code, § 669.)

196. Under Evidence Code §669, negligence is presumed if the plaintiff establishes four elements: (1) the defendant violated a statute, ordinance, or regulation; (2) the violation proximately caused death or injury to person or property; (3) the death or injury resulted from an occurrence the nature of which the statute, ordinance, or regulation was designed to prevent; and (4) the person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted.

197. As described herein, Google has intruded upon the following statutes, ordinances, or regulations:

- i. California Invasion of Privacy Act (“CIPA”) Penal Code §§ 631

and 632

- ii. Comprehensive Computer Data Access and Fraud Act (“CDAFA”), CAL. PENAL CODE § 502 ET SEQ Violated dozens of state criminal laws on wiretapping and invasion of privacy, including the California Invasion of Privacy Act;
- iii. California Unfair Competition Law (“UCL”), CAL. BUS. & PROF. CODE § 17200 ET SEQ.

198. Defendant’s negligence was a substantial factor in causing the Plaintiffs’ Personal Information and communications to be surreptitiously intercepted and used for targeted advertising or for development of Google’s own proprietary products/services, and in doing so caused Plaintiffs’ injuries.

199. The damages suffered by Plaintiffs were the direct and reasonably foreseeable result of Defendant’s negligent breach of its duties to adequately design, implement, and maintain reasonable practices to avoid unlawful harvesting of user data and personal information without consent.

200. Defendant’s negligence directly caused significant harm to Plaintiffs. As members of the public and users of Google’s products and services, Plaintiffs are one of the class of persons for whose protection the statutes were adopted.

## **COUNT EIGHT: LARCENY/RECEIPT OF STOLEN PROPERTY**

### **Cal. Penal Code § 496(a), (c)**

201. Plaintiffs hereby incorporate all foregoing paragraphs as if fully stated herein.

202. Defendant illegally obtained vast amounts of private information to sell.

203. Defendant’s taking of Plaintiffs’ Personal Information violated Plaintiffs’ Property Interests.



1       204. Penal Code section 496(a) creates a cause of action against  
2 anyone who (1) receives any property that has been stolen or obtained in any  
3 manner constituting theft, knowing the property to be stolen or obtained, or  
4 (2) conceals, sells, withholds, or aids in concealing or withholding any  
5 property from the owner, knowing the property to be so stolen or illegally  
6 obtained.

7       205. Under Penal Code Section 7, “the word ‘person’ includes a  
8 corporation as well as a natural person.” Thus, Defendant is a person under  
9 496(a).

10       206. As discussed above, Defendant stole Plaintiff’s Personal  
11 Information, Internet communications, and sensitive data to use for their  
12 targeted advertising services and product development. Google’s practices  
13 generate massive profits at the expense of Plaintiffs’ property interests. At no  
14 point did Plaintiffs consent to Defendant’s pilfering of Plaintiffs’ personal  
15 information and data.

16       207. Defendant’s conduct constitutes larceny/receipt of stolen  
17 property under Cal. Penal Code 496(a) because it: (1) knew that the  
18 information was stolen or obtained by theft, and with such knowledge, and (2)  
19 concealed, withheld, or aided in concealing or withholding said data from  
20 their rightful owners by unlawfully selling the data and saving the data to  
21 develop their own proprietary products.

22       208. Plaintiffs did not consent to such taking and misuse of their  
23 Personal Information.

24       209. Defendant’s taking of Personal Information was intended to  
25 deprive the owners of said information of their ability to use their Personal  
26 Information in the way they choose.

27       210. As a result of Defendant’s actions, Plaintiffs and each of them,  
28 seek actual, treble, and punitive damages in an amount to be determined at

1 trial. Plaintiffs and each of them, seek treble and punitive damages because  
2 Defendant's actions were malicious, oppressive and willful, and were  
3 calculated to injure Plaintiffs and made in conscious disregard of Plaintiffs'  
4 rights. Punitive damages are warranted to deter Defendant from engaging in  
5 future misconduct.

6 211. Plaintiffs seek restitution for the unjust enrichment obtained by  
7 Defendant as a result of the commercialization of Plaintiffs' sensitive data.

8  
9 **COUNT NINE: TRESSPASS TO CHATTLES**

10 212. Plaintiffs hereby incorporate all foregoing paragraphs as if fully  
11 stated herein.

12 213. The common law prohibits the intentional intermeddling with  
13 personal property, which results in the deprivation of the use of the personal  
14 property, or impairment of the condition, quality, or value of the personal  
15 property.

16 214. On multiple occasions, Defendant knowingly, willfully,  
17 intentionally, and maliciously gained unlawful access to Plaintiffs' Incognito  
18 mode browsing data with the intention to acquire the information and data  
19 contained therein.

20 215. Plaintiffs and each of them owned their personal information and  
21 Incognito mode private browsing data.

22 216. Through its conduct, Defendant intentionally interfered with  
23 Plaintiffs' possession of their property, and/or, injured their property interest  
24 when Defendant unlawfully took, used, and intentionally exercised wrongful  
25 control over their content and data for its own benefit.

26 217. Plaintiffs and each of them did not consent to Defendant's  
27 interference with the possession of their personal information, Internet  
28 communications, and private browsing data.

1       218.       Plaintiffs and each of them were harmed by the unlawful,  
2       unauthorized interception, tracking, collecting, saving, and selling of their  
3       data because this: (1) substantially interfered with their ownership and  
4       intended possession of their data; (2) resulted in a loss of control of their data;  
5       and (3) decreased the value of their personal information by compromising it.

6       219.       Defendant's conduct was the proximate cause of Plaintiffs' harm.

7       220.       As a result of Defendant's unauthorized interference with  
8       Plaintiffs' property, Plaintiffs have been and will continue to be damaged as  
9       their personal information and private Incognito mode data continues to be at  
10      risk of exposure.

11      221.       Plaintiffs and each of them seek an award of actual damages to  
12      be determined at trial.

13  
14                   **PRAYER:**

15      WHEREFORE, Plaintiffs respectfully request that this Court:

16  
17      A. Award compensatory damages, including statutory damages where  
18      available, to Plaintiffs and each of them, against Defendant for all  
19      damages sustained as a result of Defendant's wrongdoing, in an amount  
20      to be proven at trial, including interest thereon;

21      B. Order disgorgement of all of Defendant's profits that were derived, in  
22      whole or in part, from Google's interception and subsequent use of  
23      Plaintiffs' communications;

24      C. Award punitive damages in an amount to prevent Defendant's further  
25      misconduct;

26      D. Award Plaintiffs their reasonable costs and expenses incurred in this  
27      action, including attorneys' fees and expert fees, and;

28      E. Grant Plaintiffs such further relief as the Court deems appropriate.

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**JURY TRIAL DEMAND**

Plaintiffs demand a trial by jury of all issues so triable.

Dated: April 11, 2024

POTTER HANDY LLP

By: /s/ Barry M. Walker  
Barry M. Walker  
Attorneys for Plaintiffs

## ATTACHMENT 1

	Name	City	State
1	Adam Salcido	Bakersfield	CA
2	Adam Schultz	Chino Hills	CA
3	Albert Avila	Lakewood	CA
4	Alec Morris	Costa Mesa	CA
5	Alex Marroquin	Fremont	CA
6	Alex Robinson	Los Angeles	CA
7	Alex Solomon	San Francisco	CA
8	Ali Fotoohi	Fresno	CA
9	Alyssa Ramirez	Victorville	CA
10	Amber Adame	North Hills	CA
11	Andrea Gargas	San Bernardino	CA
12	Andrew Massaro	Santa Cruz	CA
13	Andrew Wallace	Roseville	CA
14	Angela Valdivia	Clovis	CA
15	Angelica Barden	Riverside	CA
16	Angelina Alvarado	Stockton	CA
17	Anna Riedel	Bass Lake	CA
18	Ashley Kiefert	Wrightwood	CA
19	Avrom Kohn	Huntington Beach	CA
20	Benjamin Renzulli	San Diego	CA
21	Benny Silva	Fresno	CA
22	Brandon Dickson	California City	CA
23	Brandon Kingcantwell	Visalia	CA
24	Brandy Sanders	Bakersfield	CA
25	Brett Savage	Chula Vista	CA
26	Brian Woodruff	Lodi	CA
27	Caitlin Vello	Vacaville	CA
28	Carl Jennings	Santa Clara	CA
29	Carol Beth Thompson	Chico	CA
30	Cathy Thompson	San Pedro	CA
31	Cesar Alvarado	Los Angeles	CA
32	Charlene Clinger	Redding	CA
33	Charlene Manley	Anaheim	CA
34	Charlotte Roberson	Pacifica	CA
35	Chris Peterson	Clovis	CA
36	Chris Woodworth	Sacramento	CA

1	37	Christian Husband	Corona	CA
2	38	Christina Nedrebo	Riverside	CA
3	39	Christopher Lapinski	Elk Grove	CA
4	40	Christopher Meeks	Salinas	CA
5	41	Christy Swint	Twentynine Palms	CA
6	42	Cody Vilkin	Woodland Hills	CA
7	43	Corey Gillens	Arcadia	CA
8	44	Cory Drucker	Signal Hill	CA
9	45	Cynthia Alvarado	Mission Hills	CA
10	46	Daniel Carlisle	San Diego	CA
11	47	Daniel Chandler	Irvine	CA
12	48	Daniel Pedersen	Paradise	CA
13	49	Darius Bruner II	Fairfield	CA
14	50	David Dichter	Los Angeles	CA
15	51	David Vasquez	Whittier	CA
16	52	Delano Hanley	Long Beach	CA
17	53	Delilah Montecino	Monterey Park	CA
18	54	Denise Dardarian	Los Angeles	CA
19	55	Denise Frazier	Rodeo	CA
20	56	Desirae clymer	Oakland	CA
21	57	Desiree Salazar	Oroville	CA
22	58	Diane Larios	Watsonville	CA
23	59	Dionysius New York-Edwards	San Diego	CA
24	60	Dominic Lipari	Los Angeles	CA
25	61	Dre Sharma	Sunnyvale	CA
26	62	Dylan Benkley	Santa Barbara	CA
27	63	Eduardo Salas	Los Angeles	CA
28	64	Edwin Kulakkattolikel	San Jose	CA
	65	Elaine Navarrette	Montebello	CA
	66	Emi Bruemmer	San Rafael	CA
	67	Eugene Erlikh	Los Angeles	CA
	68	Garrett Luchaco	Dixon	CA
	69	Geno Kang	Lancaster	CA
	70	George Stiffman	Los Angeles	CA
	71	Gizelle Victoria	Antioch	CA
	72	Gizelle Victoria	Antioch	CA
	73	Grace Jones	San Diego	CA
	74	Haben Woldemariam	Los Angeles	CA

1	75	Heather Martin	Northridge	CA
2	76	Ivan Zermeno	Torrance	CA
3	77	James Hill	Yucca Valley	CA
4	78	James Rivera	Victorville	CA
5	79	Jason Clark	Sonora	CA
6	80	Jason Davis	Merced	CA
7	81	Jay Sims	Westlake Village	CA
8	82	Jeffrey Tremblay	Lancaster	CA
9	83	Jeillianne Mendoza	San Jose	CA
10	84	Jennifer Gverovich	San Jose	CA
11	85	Jeramie Bryan	San Jose	CA
12	86	Jerrell Jordon	Oakland	CA
13	87	Jesus Guerrero	Moreno Valley	CA
14	88	Jethro Herrera	San Jose	CA
15	89	Jimmy Escobar	San Diego	CA
16	90	Jimmy Kashanian	Campbell	CA
17	91	John De La Torre	Imperial	CA
18	92	John Kroll	Anderson	CA
19	93	John Moore	Sacramento	CA
20	94	John Reyes	Menifee	CA
21	95	Jonathan Balk	Santa Monica	CA
22	96	Jonathan Miravalle	Clearlake Oaks	CA
23	97	Jose Avila	Baldwin Park	CA
24	98	Joseph Barrett	San Diego	CA
25	99	Joseph Friend	Chula Vista	CA
26	100	Joshua Jones	Sutter	CA
27	101	Joshua Monett	Vista	CA
28	102	Joshua Quirimit	Los Angeles	CA
	103	Julianne Varin	Los Angeles	CA
	104	Julio Banderas	La Habra	CA
	105	Justin Jester	Olivehurst	CA
	106	Kanan Morelock	Ventura	CA
	107	Karen Moore	Ontario	CA
	108	Karla Wise	Hanford	CA
	109	Katrina Campbell McCorkle	Auberry	CA
	110	Keith Lander	Chico	CA
	111	Ketri Landrum	Spring Valley	CA
	112	Kevin Ochoa	Rialto	CA
	113	King Jennifer	Concord	CA

1	114	Kristina Florian	Willow Creek	CA
2	115	Lakyra Turner	Sacramento	CA
3	116	Lauri Roberts	Modesto	CA
4	117	Lawna Young	Sacramento	CA
5	118	Leeanne Barnes	Sacramento	CA
6	119	Lindsey Sampson	Bolinas	CA
7	120	Lisa Tapia	Selma	CA
8	121	Luis Rodriguez	Fountain Valley	CA
9	122	Mac-Jay Loresto	Los Angeles	CA
10	123	Marcos Ramos	San Fernando	CA
11	124	Marcus Herron	Stockton	CA
12	125	Maretanna Curtis	Newport Beach	CA
13	126	Mario Paz	Los Angeles	CA
14	127	Mark Cousineau	Ventura	CA
15	128	Mark Trimble	Colton	CA
16	129	Marnie Evans	Riverside	CA
17	130	Maryam Kazemi	Rohnert Park	CA
18	131	Matthew Adamson	San Bernardino	CA
19	132	Matthew Jahn	Woodland	CA
20	133	Matthew Meza	Concord	CA
21	134	Michael Everly	San Diego	CA
22	135	Michael Molina	Valley Village	CA
23	136	Michael Nilsson	Arcata	CA
24	137	Michel Dunia	Santa Rosa	CA
25	138	Michelle Bustamante	Oakland	CA
26	139	Michelle Cooper	Compton	CA
27	140	Michelle Irwin	Dana Point	CA
28	141	Michelle Morris	Camino	CA
	142	Miranda Henning	Folsom	CA
	143	Mushun Richardson	Hayward	CA
	144	Nancy Ganzon	Menifee	CA
	145	Nicholaus Oliver	Hermosa Beach	CA
	146	Nick Shen	San Francisco	CA
	147	Nick Sodaro	Eureka	CA
	148	Nicole OShea	San Diego	CA
	149	Nikolas Chaplin	Manteca	CA
	150	Nino Mejia	Torrance	CA



151	Omar Mendez	Canoga Park	CA
152	Orlandus Squalls	long beach	CA
153	Patrick Sutton	Marina del Rey	CA
154	Randall Miller	San Luis Obispo	CA
155	Randy Smith	Bellflower	CA
156	Raymundo De Leon	Ontario	CA
157	Regina Armijo	Brea	CA
158	Rex Lawrence	Vista	CA
159	Richard Bradley	Los Angeles	CA
160	Richard Guajardo	Fresno	CA
161	Rick Krutilla	Martinez	CA
162	Robert Endres	Sacramento	CA
163	Robert Harrison on	Fairfield	CA
164	Robyn Learned	Sacramento	CA
165	Roger Jones II	Keyes	CA
166	Roxanne Varela	Lancaster	CA
167	Roy Hernandez	Elk Grove	CA
168	Ryan Rivera	Agoura Hills	CA
169	Ryan Sumida	Chico	CA
170	Ryan Weaver	Carmichael	CA
171	Samantha Dellia	Caruthers	CA
172	Sheila Gibson	Richmond	CA
173	Sheshe Davis	Redondo Beach	CA
174	Sonia Ighalo	San Leandro	CA
175	Sophia Allgood	Oakland	CA
176	Spike Jackson	Biggs	CA
177	Stephen Vaisa	Santa Ana	CA
178	Tarella Golden	Hawaiian Gardens	CA
179	Tristian Alvarado-Arana	San Francisco	CA
180	Tucker Potter	San Marcos	CA
181	Vanessa Bell	Richmond	CA
182	Victor Horner	Fresno	CA
183	Vincent Cowart	Los Angeles	CA
184	Vivian Jordan	Montague	CA
185	William Gorham	Escondido	CA